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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/784,543  | 02/15/2001  | Gerold Kurth         | DE999098US1         | 3254             |
| 7590  | 06/07/2004  |                      | EXAMINER            |                  |
| Blanche E. Schiller, Esq.<br>HESLIN & ROTHENBERG, P.C.<br>5 Columbia Circle<br>Albany, NY 12203 |             |                      | GECKIL, MEHMET B    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2142                |                  |

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                  |                  |
|------------------------------|------------------|------------------|
| <b>Office Action Summary</b> | Application No.  | Applicant(s)     |
|                              | 09/784,543       | BOEBLINGEN ET AL |
|                              | Examiner         | Art Unit         |
|                              | Mehmet B. Geckil | 2142             |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 February 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 15 February 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

1. Claims 1-25 are presented for examination.
2. Claims 1-25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because of the following :

- a) "the clock difference..." in claims 1-2, 9, 17, and 18 lack clear antecedent basis;
- b) "the request traversal time..." in claims 1, 9, 17, and 18 lack clear antecedent basis;
- c) "the response traversal time..." in claims 1, 9, 17, and 18 lack clear antecedent basis;
- d) "the arrival time..." in claims 2, 10, 19 lack clear antecedent basis; and
- e) "T4" in claims 2, 10, and 19 is undefined therefore claims are indefinite.

Applicant should go through all of the claims in the light of the examples given above and make sure that there is no antecedent basis and any other indefiniteness problems in this set of claims.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2142

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al.

6. Fletcher et al (6,321,264) taught the invention substantially as claimed including a system for performing network-performance statistics including determining request time or response time of packet traversal between the first and second computer systems comprising:

a) means for determining the time stamp differences between the first and second computer systems (Figure 8, element 864);  
b) means for calculating either the request traversal time or the response traversal time using the time stamp differences (col 12, line 48 et seq and col 13, line 1 et seq.)

7. It would have been obvious to one of ordinary skill in the networking art at the time of the invention that the claimed invention differed from the teachings of Fletcher et al only by a degree, e.g., in the claimed clock differences versus time stamp differences.

But this is no more than a difference in a degree because they both provide time information. Other claimed elements are all obvious variations of the well known features of the networking art, e.g., client, server, and routers and http protocol applied to these elements are well known in the art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehmet Geckil whose telephone number is (703) 305-9676. The examiner can normally be reached on Monday through Friday from 6:30 A.M. to 3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jack Harvey, can be reached on (703) 305-9705. The fax phone numbers for the organization where this application or proceeding is assigned are listed hereinbelow.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800/4700. Customer service number is (703) 306-5631.

**Any response to this action should be mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**or faxed to:**

(703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington, VA., Fourth Floor (Receptionist).

6/2/04

MEHMET B. GECKIL  
PRIMARY EXAMINER

*Mehmet Geckil*